

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

DEVON A. DURHAM,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.
) 5:07-CV-095-BG
) ECF
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
)
Defendant.)

REPORT AND RECOMMENDATION

The United States District Court reassigned this case to the docket of the United States Magistrate Judge for further proceedings on May 29, 2007. Plaintiff has not consented to the jurisdiction of the United States Magistrate Judge, and, therefore, the undersigned now files this Report and Recommendation recommending that the United States District Court dismiss Plaintiff's complaint.

I. Discussion

Plaintiff *pro se* appealed a decision of the Defendant by filing a complaint on May 25, 2007. On June 12, 2007, Plaintiff *pro se*'s motion for leave to proceed *in forma pauperis* was granted by this court, allowing him to file his pleadings without prepayment of costs and instructing him to perfect service on the Defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Subsequently, on August 9, 2007, this court entered an order advising the Plaintiff *pro se* that he must provide proof of service to the court no later than September 24, 2007, otherwise the complaint would be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedures. The Order was forwarded by certified mail, return receipt requested. According to court records, Plaintiff *pro se* acknowledged receipt of the Order; however, he has not responded.

II. Recommendation

Pursuant to Rule 4(l) and 4(m) of the Federal Rules of Civil Procedure the person effecting service shall provide proof of service; if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court may dismiss the action without prejudice.

Plaintiff *pro se*'s complaint was filed on May 25, 2007. As of this date, he has failed to comply with the Federal Rules Rules of Civil Procedure regarding service and, therefore, the complaint should be dismissed without prejudice for lack of service.

III. Right to Object

Pursuant to 28 U.S.C. § 636(b)(1), any party has the right to serve and file written objections to the Report and Recommendation within ten days after being served with a copy of this document. The filing of objections is necessary to obtain de novo review by the United States District Court. A party's failure to file written objections within ten days shall bar such a party, except upon grounds of plain error, from attacking on appeal the factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto*

Ass'n, 79 F.3d 1415, 1429 (5th Cir. 1996) (en banc).

The clerk is requested to forward a copy of this Report and Recommendation to Plaintiff *pro se* by ***certified mailed, return receipt requested.***

Dated: November 28, 2007.


NANCY M. KOENIG
United States Magistrate Judge